

1
2
3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 BANK OF AMERICA, N.A.,

Case No. 2:16-cv-00764-GMN-GWF

8 Plaintiff,

9 v.

ORDER

10 AZURE MANOR/RANCHO DEL PAZ
11 HOMEOWNERSASSOCIATION; SFR
INVESTMENT POOL 1, LLC; and ALESSI
& KOENIG, LLC,

**Re: Motion for Protective
Order (ECF No. 51)**

12 Defendants.
13

14 This matter is before the Court on Plaintiff/Counter/Cross-Defendant Bank of America,
15 N.A.'s Motion for Protective Order (ECF No. 51), filed on February 23, 2018.
16 Defendant/Counter/Cross-Claimant SFR Investment Pool 1, LLC filed its Opposition (ECF No.
17 59) on March 9, 2018, and Plaintiff filed its Reply (ECF No. 61) on March 15, 2018. The Court
18 determines that this motion can be resolved without the need for oral argument and the hearing
19 scheduled for March 22, 2018 at 9:30 A.M. is therefore vacated.

20 **BACKGROUND AND DISCUSSION**

21 This case is one of several between Plaintiff/Counter-Defendant Bank of America, N.A.
22 and Defendant/Counterclaimant SFR Investment Pool 1, LLC arising out of the SFR's purchase
23 of residential real property that was previously sold pursuant to the non-judicial foreclosure of a
24 homeowners' association assessment lien. The issue in these cases is whether the foreclosure
25 sale had the legal effect of extinguishing a senior deed of trust on the property securing a
26 promissory note for the purchase of the property.

27 Defendant SFR has noticed the deposition of Plaintiff pursuant to Rule 30(b)(6) of the
28 Federal Rules of Civil Procedure in several of these cases. The topics listed in the deposition

1 notices are identical or substantially identical. The parties have met, conferred and reached
2 agreement regarding the majority of topics that will be inquired into at the depositions and to
3 which Plaintiff's designee must be prepared to testify. The parties have not been able to agree on
4 the following topics:

5 5. Any and all damages You allege You suffered as a result of the
6 Association foreclosure and/or as a consequence of any claim You made
7 against SFR and/or the Association.

8 8. All facts and circumstances surrounding Your acquisition of
9 Your interest in the Deed of Trust and/or underlying promissory note,
including, but not limited to:

10 a. the amount You paid for Your interest in the Deed of Trust;

11 b. Your knowledge of the MERS milestones for the Deed of Trust;

12 c. Your knowledge of any purchase agreement applicable to the Deed
13 of Trust between you and the entity from which You purchased Your
interest in the loan underlying the Deed of Trust; and

14 d. Your knowledge of any pooling and servicing agreement applicable
15 to the Deed of Trust.

16 9. Your knowledge regarding creation, execution and recording of
17 the assignments of the Deed of Trust, including Your knowledge of any power
18 of attorney referenced or relied upon in creation of said assignments.

19 *Motion for Protective Order (ECF No. 51), Exhibit A-1.*

20 In *Bank of America, N.A. v. Lake Mead Court Homeowners' Association, SFR Investment*
21 *Pool 1, LLC*, Case No. 2:16-cv-00504-GMN-NJK, the Plaintiff filed substantially the same
22 motion, SFR filed substantially the same opposition and Plaintiff filed substantially the same reply
23 (*See id.* ECF Nos. 70, 71 and 75).¹ On March 14, 2018, Judge Koppe granted Plaintiff's motion
24

25
26
27 ¹ The parties have also stipulated that the Court's decision in *Bank of America, N.A. v. Lake Mead Court*
28 *Homeowners' Association, SFR Investment Pool 1, LLC*, will apply to the same topics in Rule 30(b)(6) deposition
notices in other cases in which Chief District Judge Navarro and Magistrate Judge Koppe are the assigned judges,
and that the decision on the motion for protective order in this case will apply to the same deposition topics in other
cases in which Chief District Judge Navarro and Magistrate Judge Foley are the assigned judges.

1 for protective order with respect to topics 5, 8 and 9. This Court fully agrees with Judge Koppe's
2 decision and hereby adopts her analysis which is quoted in its entirety as follows:

3
4 A. Topic 5

5 The first dispute relates to SFR's desire to obtain Plaintiff's deposition
6 testimony as to its damages. *See* Docket No. 70-1 at 10. Plaintiff argues that,
7 *inter alia*, such testimony is not relevant because it does not have a damages
8 claim against SFR and seeks damages only against the HOA as an alternative
remedy. *Id.* SFR counters that Plaintiff "must testify as to its damages to have
constitutional standing." Docket No. 71 at 4. Plaintiff has the better argument.

9 Discovery must be "relevant to any party's claim or defense." Fed. R.
10 Civ. P. 26(b)(1). The drafters of the 2015 amendments intentionally omitted
11 language that discovery must be "reasonably calculated to the discovery of
12 admissible evidence" so that it could no longer be interpreted as defining
13 relevance, and case law using such a standard has been abrogated. *See, e.g., In*
14 *re Bard IVC Filters Prod. Liab. Litig.*, 317 F.R.D. 562, 563-64 (D. Ariz. 2016).
15 Hence, it is clear that relevance for discovery purposes is no longer defined as
16 encompassing information that "appears reasonably calculated to the discovery
17 of admissible evidence." *Id.* at 564 (holding that previous Ninth Circuit
authority to the contrary has been abrogated). "The test going forward is
whether the evidence is 'relevant to any party's claim or defense.'" *Id.* Even
after the 2015 amendments, courts continue to recognize that discovery
relevance remains "broad" in scope. *See, e.g., Federal Nat'l Mortg. Assoc. v.*
SFR Investments Pool 1, LLC, 2016 WL 778368, at *2 n.16 (D. Nev. Feb. 25,
2016).

18 The Supreme Court has identified three standing requirements: (1) the
19 plaintiff must have suffered an injury in fact, which is an invasion of a legally
20 protected interest that is (a) concrete and particularized, and (b) actual or
21 imminent; (2) there must be a causal connection between the injury and the
22 conduct complained of such that the alleged injury is fairly traceable to the
challenged conduct; and (3) it must be likely that the injury will be redressed
by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61
(1992).

23 In this case, SFR appears to be confusing "damages" with "injury in
24 fact." An injury in fact clearly exists here, as do the other standing
25 requirements. SFR is asserting (through its own counterclaim in this case) that
26 Plaintiff no longer has an interest in the subject property as a result of the
homeowners association foreclosure sale. Docket No. 32 at 13. Plaintiff brings
27 a claim that its interest was not extinguished, and that title should be quieted in
its favor accordingly. Docket No. 1 at 6-11. Whether Plaintiff is asserting a
28 claim for damages against SFR does not negate its standing to bring its claim
to quiet title. [FN 1]

1 [FN 1] Any damages Plaintiff claims against the HOA does not
2 impact its standing to bring claims against SFR. *Cf. Davis v. Fed.*
3 *Elec. Comm’n*, 554 U.S. 724, 734 (2008) (“Standing is not dispensed
4 in gross. Rather, a plaintiff must demonstrate standing for each claim
5 he seeks to press and for each form of relief that is sought” (internal
6 citations and quotations omitted)).

7
8 In short, Plaintiff does not seek damages against SFR and Plaintiff is not
9 required to testify that it incurred damages in order to have standing in this
10 matter. Accordingly, the Court grants the motion for protective order as to
11 Topic 5.

12 B. Topic 8

13 The second dispute relates to SFR’s desire to obtain Plaintiff’s
14 deposition testimony regarding “[a]ll facts and circumstances surrounding
15 [Plaintiff’s] acquisition of [its] interest in the Deed of Trust and/or underlying
16 promissory note.” Docket No. 70-1 at 11. Plaintiff objects to this topic on
17 several grounds, including that it is not relevant. *See* Docket No. 70 at 5. In
18 particular, Plaintiff argues that it has sufficiently demonstrated a right to
19 maintain suit by providing a copy of the deed of trust and a copy of the
20 assignment of the deed of trust to Plaintiff. *See id.* at 6. SFR contends that such
21 discovery is proper because “[i]t is possible that [Plaintiff] simply does not
22 hold the note or deed and never has” or that the discovery may provide some
23 other basis on which SFR can challenge Plaintiff’s standing. Docket No. 71 at
24 6. Plaintiff has the better argument.

25 As explained in another case by United States District Judge Miranda M.
26 Du in denying a request for discovery pursuant to Rule 56(d) of the Federal
27 Rules of Civil Procedure, Plaintiff “is not seeking to enforce the note in this
28 action; rather, it seeks a declaration that is the beneficiary of the DOT and
mortgage loan and that these still encumber the Property.” *PHH Mortg. Corp.*
v. SFR Investments Pool 1, LLC, 2018 WL 547230, at *2 (D. Nev. Jan. 24,
2018). It suffices for purposes of this litigation for Plaintiff to provide the
Court with a copy of the deed of trust and a copy of the assignment of the deed
of trust to Plaintiff. *See id.*; *see also Bank of Am., N.A. v. SFR Investments Pool*
1, LLC, 2016 WL 2843802, at *4 (D. Nev. May 12, 2016) (holding that
testimony regarding the price the bank paid to secure its interest in the deed of
trust was irrelevant). In this case, Plaintiff has done so and has also agreed to
produce a witness to identify its interest. *See* Docket No. 70 at 6. The Court
agrees with Plaintiff that further discovery on this issue is irrelevant.
Accordingly, the Court grants the motion for protective order as to Topic 8.

29 C. Topic 9

30 The third dispute relates to SFR’s desire to obtain Plaintiff’s deposition
31 testimony regarding its “knowledge regarding [the] creation, execution and
32 recording of the assignments of the Deed of Trust.” Docket No. 70-1 at 11.

1 Similar to its position with respect to Topic 8, Plaintiff has agreed to testify as
2 to its status as record deed of trust beneficiary and to lay the foundation for the
3 authenticity of the recorded assignment, but Plaintiff argues that the testimony
4 sought otherwise lacks any nexus to the issues in this case. Docket No. 70 at 7.
5 As such, Plaintiff explains that the deposition topic amounts to a fishing
6 expedition in search of some currently unavailable defense. *See* Docket No.
7 70-1 at 5. SFR counters that the testimony may reveal a defect in the
8 assignment. Docket No. 71 at 7. Plaintiff has the better argument.

9 District courts need not condone the use of discovery to engage in
10 fishing expeditions. *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1072 (9th Cir.
11 2004). It is axiomatic that a party is not entitled to make accusations without
12 basis and then use the discovery process in the hope of uncovering such a
13 basis. *See, e.g., Rodriguez v. Quality Loan Serv. Corp.*, 2010 WL 1644695, at
14 *2 (D. Ariz. Apr. 22, 2010). [FN 2] This already-settled proposition is
15 reenforced by the 2015 amendments to the discovery rules, which were meant
16 to curb the culture of scorched earth litigation tactics by emphasizing the
17 importance of ensuring that the discovery process “provide[s] parties with
18 efficient access to what is needed to prove a claim or defense, but eliminate
19 unnecessary or wasteful discovery.” *Roberts v. Clark County School Dist.*, 312
20 F.R.D. 594, 603-04 (D. Nev. 2016).

21 [FN 2] This issue arises most commonly when a plaintiff seeks
22 discovery without a sufficient factual basis alleged in the complaint,
23 *see, e.g., Aschroft v. Iqbal*, 556 U.S. 662, 678-79 (U.S. 2009) (Rule 8
24 “does not unlock the doors of discovery for a plaintiff armed with
25 nothing more than conclusions”), but the same prohibition applies
26 when a defendant seeks discovery based on speculation about the
27 existence of a potential defense, *see, e.g., MP Nexlevel, of Cal., Inc. v.*
28 *CVIN, LLC*, 2016 WL 1408459, at *4 (E.D. Cal. Apr. 11, 2016)
(finding discovery to be an improper “fishing expedition” when the
defendant was “searching for something improper that might give
right to a potential defense, rather than following a lead indicating
that such impropriety will be found”).

21 With respect to this deposition topic, SFR does not contend that the subject
22 matter is currently at issue in this case. Instead, it argues that the deposition
23 testimony may “cause the assignments, and the bank’s interest in the property,
24 *to be at issue.*” Docket No. 71 at 7 (emphasis added). The speculative hope that
25 discovery may be helpful in formulating a currently-unavailable defense is
26 simply not sufficient to justify that discovery. This is not “twisted logic” as
27 SFR contends, *id.*, but rather a well-settled principle that parties should not be
28 subjected to fishing expeditions.

26 *Order* (ECF No. 81), at 2-5.

27 Bank of America states that in this case, it issued the loan to the purchaser on which the
28 deed of trust was obtained and that it has not assigned the deed of trust. *Motion for Protective*

1 *Order* (ECF No. 51), at 2; *Exhibit B*, (Response to Interrogatory No. 1). Thus, this case does not
2 even involve assignments or transfers of the deed of trust. SFR has not pointed to any alleged
3 defects in the deed of trust or record that would warrant obtaining testimony on the subject
4 topics. Accordingly,

5 **IT IS HEREBY ORDERED** that Plaintiff/Counter/Cross Defendant Bank of America,
6 N.A.'s Motion for Protective Order (ECF No. 51) is **granted**.

7 **IT IS FURTHER ORDERED** that the hearing scheduled in this matter for March 22,
8 2018 at 9:30 A.M. is **vacated**.

9 Dated this 19th day of March, 2018.

10 
11 _____
12 GEORGE FOLEY, JR.
13 UNITED STATES MAGISTRATE JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28